

Remarks

A. Pending Claims

Claims 187-262 and 264-276 are currently pending. Claims 187, 194, 195, 214, 220, 221, 239, 243, 244, 262, 265, and 268-270 have been amended. Claim 263 has been cancelled without prejudice.

B. Elections/Restrictions

The Examiner withdrew claims 209, 234 and 257, stating that these claims are directed to nonelected species. Applicant respectfully disagrees that the claims are directed to a non-elected species. Section 806.04(f) of the MPEP states:

Claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (*emphasis added*).

Claims 209, 234 and 257 do not include features that are mutually exclusively of those of Applicant's other claims, but merely add an additional feature (i.e., an indicator). In addition, Figure 6 depicts an embodiment of a transverse connector with three adjustable degrees of freedom. Figure 6 does not exclude a vibrational indicator. Applicant respectfully requests that the Examiner rescind his withdrawal of claims 209, 234 and 257.

C. Claim Objections

Claims 265 was objected to because of an informality. Claim 265 has been amended for clarification.

D. The Claims Are Definite Pursuant To 35 U.S.C. § 112, Second Paragraph

The Examiner rejected claims 195, 221 and 244 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner stated: “There is no reference point or ‘zeroing out’ from which to measure the lower limit as being ‘greater than 0 degrees.’” Amended claims 195 and 221 describe “wherein a lower limit of angulation of the first section and the second section relative to each other is greater than 0°.” Amended claim 244 describes “wherein a lower limit of the limited range of motion of the first section and the second section relative to each other is greater than 0°.” Support for Applicant’s amendments may be found on page 13, lines 8-18 of Applicant’s specification, which state:

An opening through the second section may be sized to allow the first section to be angled relative to the second section. A width of the opening may allow only a limited range of angulation between the first section and the second section.... The opening may be offset from a longitudinal axis of the second section so that the angulation of the first section relative to the second section does not have a lower limit of 0°. For example, the opening of the second section may allow an angulation range of from 10° to 35°.

Applicant submits that amended claims 195, 221, and 244 are not indefinite. Applicant respectfully requests that the Examiner withdraw his rejection of claims 195, 221, and 244.

E. The Claims Are Not Anticipated By Troxell Pursuant To 35 U.S.C. § 102(e)

The Examiner rejected claims 187-197, 212-222, 224-233, 237-245, 247-256, 260-262 and 264-276 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,283,967 to Troxell et al. (hereinafter “Troxell”). Applicant respectfully disagrees with these rejections.

The standard for “anticipation” is one of fairly strict identity. To anticipate a claim of a patent, a single prior source must contain all the claimed essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 U.S.P.Q.81, 91 (Fed. Cir. 1986); *In re Donahue*, 766 F.2d 531, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Amended claims 187, 214, and 270 describe combinations of features including: “wherein the cam system is configured to not axially advance into the connector during use of the cam system.” Support for Applicant’s amendments may be found in Applicant’s specification, page 8, lines 12-13, which state: “A cam system may be unthreaded so that the cam system does not axially advance into or out of the transverse connector during use.” Troxell does not appear to teach or suggest at least the above-described features of claims 187, 214 and 270, in combination with the other features of the claims.

Troxell states:

The lateral ends of male and female members 16, 18 each includes [*sic*] a threaded hole 92 and a clamping screw 94 threadably received in threaded hole 92 for securing first and second fixation elements 12, 14 to hook 90.

As seen best in FIGS. 2 and 3, clamping screw 94 has a first end 96 with a slot 98 for receiving a tool to turn clamping screw 94, a threaded cylindrical first body portion 100, and a conical second body portion 102....[F]ixation elements 12, 14 is [*sic*] clamped between conical second body portion 102 and the region near tip portion 104.
(Troxell, col. 6, lines 9-25).

Troxell discloses a fixation element clamped using a threaded clamping screw. Troxell does not teach or suggest a cam system configured to not axially advance into the connector during use of the cam system, in combination with the other features of claims 187, 214, and 270. Applicant requests removal of the anticipation rejections of claims 187, 214, and 270 and the claims dependent thereon.

Amended claim 239 describes a combination of features including: “a second section coupled to the first section, wherein one of the sections comprises an aperture configured to receive a portion of the other section, wherein a width of the aperture allows a portion of the first section and a portion of the second section to be angulated only within a limited range of motion that is less than about 30° relative to each other.” Support for Applicant’s amendment may be found in Applicant’s specification, page 8, lines 8-15, which state:

An opening through the second section may be sized to allow the first section to be angled relative to the second section. A width of the opening may allow only a limited range of angulation between the first section and the second section. For example, the width of the opening may allow the angulation of the first section relative to the second section from about 0° to about 18°. An opening may be positioned through the second section so that smaller or larger angulation ranges are possible. For example, the width of the opening may allow the angulation of the first section relative to the second section in a range of from 0° to 10°, or in a range from 0° to 30°.

Troxell does not appear to teach or suggest at least the above-recited feature of claim 239, in combination with the other features of the claim.

Troxell discloses:

a two piece assembly which includes a link terminal 52, an intermediate link 54, and a locking element 56 to secure the two together. A lateral end of link terminal 52 has male member linking element 22 and intermediate link 54 has a medial end with projection 24 and a lateral end 58 which engages a medial end 60 of link terminal 52. Medial end 60 of link terminal 52 includes a first textured surface 62 which mates with a second textured surface 64 of lateral end 58 of intermediate link 54 in such a fashion that first textured surface 62 is rotatable with respect to second textured surface 64 to accommodate for any convergence or divergence between first and second fixation elements 12, 14.
(Troxell, col. 5, lines 37-49).

Troxell discloses an intermediate link that is rotatable with respect to a link terminal. Troxell does not appear to teach or suggest “a second section coupled to the first section, wherein one of the sections comprises an aperture configured to receive a portion of the other section, wherein a width of the aperture allows a portion of the first section and a portion of the second section to be angulated only within a limited range of motion that is less than about 30° relative to each other” in combination with the other features of claim 239. Applicant requests removal of the anticipation rejection of claim 239 and the claims dependent thereon.

F. Allowable Subject Matter

The Examiner objected to claim 263 as being dependent on a rejected base claim, but stated that the claim would be allowable if rewritten in independent form including all of the

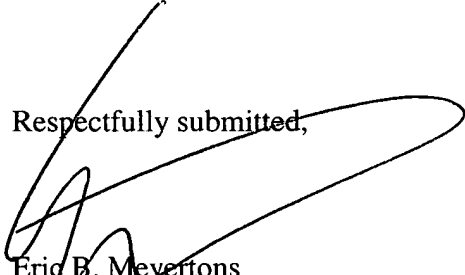
limitations of the base claim and any intervening claims. Applicant has amended independent claim 262 to include the features of dependent claim 263. Applicant submits that amended claim 262 and the claims dependent thereon are in condition for allowance.

G. Additional Remarks

Applicant submits that all claims are in condition for allowance. Favorable reconsideration is respectfully requested.

Applicant believes that no fees are due in association with the filing of this document. If any extension of time is required, Applicant hereby requests the appropriate extension of time. If any fees are required, please charge those fees to Meyertons, Hood, Kivlin, Kowert & Goetzl, P.C. Deposit Account No. 50-1505/5259-04900/EBM.

Respectfully submitted,


Eric B. Meyertons
Reg. No. 34,876

Attorney for Applicant

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. Box 398
Austin, Texas 78767-0398
(512) 853-8800 (voice)
(512) 853-8801 (facsimile)

Date: 11-13-03